

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

DINH KIM HUYNH,

Petitioner,

v.

**CIVIL ACTION NO. 3:06-CV-125
(BAILEY)**

DOMINIC A. GUTIERREZ,

Respondent.

ORDER

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on September 6, 2007 [Doc. 17]. In that filing, the magistrate judge recommended that this Court dismiss as moot the petitioner's application under 28 U.S.C. § 2241 [Doc. 1].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1);

Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due September 20, 2007 [Doc. 17], pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). Neither party filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

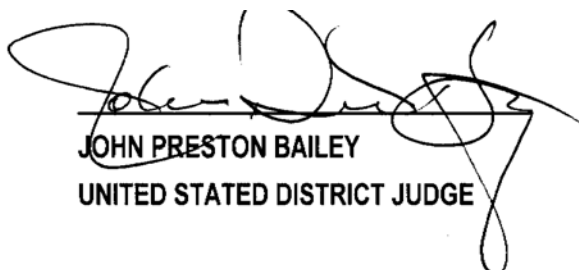
In filing his petition, the petitioner's ultimate goal was to spend the last six months of his sentence at a halfway house or home confinement. The magistrate conducted an investigation of the BOP inmate locator and discovered that the petitioner was released from custody on September 4, 2007. Accordingly, the petitioner can no longer benefit from the requested relief, and the case is now moot.

Therefore, upon careful review of the R & R, it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation** [Doc. 17] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Therefore, the respondent's Motion to Dismiss [Doc. 14] is **DENIED as moot**. Accordingly, the Court hereby **DISMISSES as moot** the petitioner's application under 28 U.S.C. § 2241 [Doc. 1] and **ORDERS** it **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to mail true copies of this Order to all counsel of record and the *pro se* petitioner.

DATED: October 5, 2007.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE